STATE OF UTAH

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GOVERNOR

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GARY R. HERBERT
LIEUTENANT GOVERNOR

March 21, 2006

The Honorable Greg J. Curtis
Speaker of the House
and
The Honorable John L. Valentine
President of the Senate

Dear Speaker Curtis and President Valentine:

After careful consideration and study, I have decided to veto H.B. 148, PARENT AND CHILD AMENDMENTS, and have transmitted it to the Lieutenant Governor for filing.

This bill seeks to modify the common law doctrine of in loco parentis. The term "in loco parentis" literally means "in the place of a parent," and a person standing in loco parentis "is one who has assumed the status and obligations of a parent without formal adoption." *Gribble v. Gribble*, 583 P.2d 64, 66 (Utah 1978); *accord Searle v. Searle*, 38 P.3d 307, 319 n.11 (Utah App. 2001). Applying this doctrine, Utah courts have long held that, "'[w]here one stands in loco parentis to another, the rights and liabilities arising out of that relation are, as the words imply, exactly the same as between parent and child.'" *Gribble*, 583 P.2d 66 (quoting *Sparks v. Hinckley*, 5 P.2d 570, 571 (1931)). Thus, a person standing in loco parentis is, in effect, recognized by the courts as a parent. *See Gribble*, 583 P.2d at 66-67.

Rights conferred under the doctrine of in loco parentis are not easily extinguished. Indeed, Utah courts have recognized that "[t]he common law concerning termination of loco parentis status" is such that "only the surrogate parent or the child is able to terminate the status at will, and the rights, duties, and obligations continue as long as they choose to continue the relationship." *Gribble*, 583 P.2d at 67. In other words, once a biological or adoptive parent has allowed a third party to participate actively in the parenting of a child, to such a degree that the third party is deemed to be standing in loco parentis, the third party's rights with respect to the child cannot unilaterally be terminated by a parent. This rule has been the subject of considerable criticism, based on the argument that the desires of a fit parent should always trump those of a third party standing in loco parentis.

This bill attempts to change that rule by providing that a "biological or adoptive parent who has not been adjudicated as an unfit parent may at any time terminate a relationship between a person standing in loco parentis and their minor child or children." H.B. 148 at 3 ln. 62-64 (General Session 2006). The bill also provides that in loco parentis "may not be used as the basis for granting" or recognizing various rights or obligations, including "parent-time or visitation," "legal or physical custody," "status as a legal guardian," "child support," or "an adoption." *Id.* at 2 ln. 53-59. In short, then, H.B. 148 (1) allows a biological parent to extinguish the rights of a third party standing in loco parentis, and (2) otherwise limits the rights that can be accorded under the doctrine of in loco parentis.

In many respects, I am sympathetic to the concerns that have given rise to this legislation. Like most Utahns, I believe that — absent truly extraordinary circumstances — the rights of biological and adoptive parents to make decisions regarding the upbringing of their minor children must stand above those of third parties, even those standing in loco parentis.

Nevertheless, I believe H.B. 148 goes too far, and would create undesirable consequences not anticipated by the bill's well-meaning proponents. Most notably, H.B. 148 would allow a biological parent to "terminate a[ny] relationship" between a minor child and a person standing in loco parentis, even if the person standing in loco parentis was a step parent who had raised the child from infancy, and the biological parent was a complete stranger to the child. The biological parent's right to exercise that authority unilaterally — casting aside bonds that have been created over the course of many years without so much as a hearing to determine what might be in the best interests of the child — would trump all other considerations unless the biological parent had previously "been adjudicated as an unfit parent." Some absentee parents may in reality be unfit for the task of parenting, but may not have been formally *adjudicated* as unfit for that task.[1]

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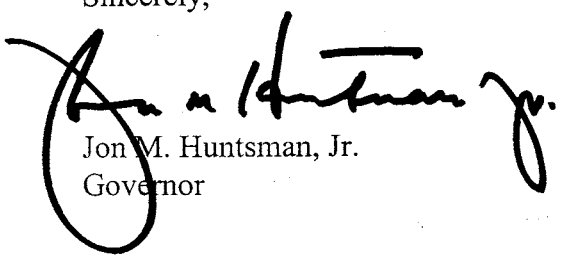
[1]Assume, for example, that a biological father abandons his wife and infant child before the child's first birthday. Assume further that the mother remarries before the child's second birthday, and that her second husband never formally adopts the child, but (1) participates actively in the child's upbringing as if he were the father, and (2) is known to the child as "dad." If the mother were to die ten years after her second marriage, the biological father could rely on H.B. 148 to unilaterally "terminate [the] relationship between" his biological child and his ex-wife's second husband, based on the fact that his ex-wife's second husband was "standing in loco parentis" with respect to the child. H.B. 148 at 3 ln. 62-64. Even if the biological father knew nothing about his child, was an unemployed drug addict with a history of violent criminal behavior, and suffered from a debilitating mental illness, his right to "terminate the relationship" between the child and the only father the child had ever known would be assured by H.B. 148, so long as he had not previously been "adjudicated as an unfit parent." *Id.* at 3 ln. 62.

It is entirely reasonable to assume that the biological father in that scenario — having abandoned the child before the child's first birthday, and having had no interaction with that child for more than a decade — could be described as an unfit parent who had never been adjudicated as such. Accordingly, I believe it would be entirely unreasonable to sign into law a bill that, on its face, would appear to give such a person the right unilaterally to terminate a child's relationship with a step father standing in loco parentis.

Giving such parents an absolute right to terminate a child's relationship with a step parent standing in loco parentis would be a mistake. I must therefore veto this bill. In so doing, however, I remain hopeful and optimistic that the legitimate concerns expressed by this bill's proponents can be addressed through legislation introduced in a future legislative session. I will gladly sign such legislation if it protects parental rights without giving rise to the unintended consequences articulated in this letter.

Sincerely,



Jon M. Huntsman, Jr.
Governor